

## Internal Revenue Service, Treasury

## § 1.37-2

### § 1.35-2 Taxpayers not entitled to credit.

For taxable years beginning after December 31, 1957, no credit shall be allowed under section 35 to a nonresident alien individual with respect to whom a tax is imposed for such taxable year under section 871(a).

### § 1.37-1 General rules for the credit for the elderly.

(a) *In general.* In the case of an individual, section 37 provides a credit against the tax imposed by chapter 1 of the Internal Revenue Code of 1954. This section and §§ 1.37-2 and 1.37-3 provide guidance in the computation of the credit for the elderly provided under section 37 for taxable years beginning after 1975. For rules relating to the computation of the retirement income credit provided under section 37 for taxable years beginning before 1976, see 26 CFR 1.37-1 through 1.37-5 (Rev. as of April 1, 1980). Note that section 403 of the Tax Reduction and Simplification Act of 1977 provides that a taxpayer may elect to compute the credit under section 37 for the taxpayer's first taxable year beginning in 1976 in accordance with the rules applicable to taxable years beginning before 1976.

(b) *Limitation on the amount of the credit.* The credit allowed by section 37 for a taxable year shall not exceed the tax imposed by chapter 1 of the Code for the taxable year (reduced, in the case of a taxable year beginning before 1979, by the general tax credit allowed by section 42).

(c) *Married couples must file joint returns.* If the taxpayer is married at the close of the taxable year, the credit provided by section 37 shall be allowed only if the taxpayer and the taxpayer's spouse file a joint return for the taxable year. The preceding sentence shall not apply in the case of a husband and wife who are not members of the same household at any time during the taxable year. For the determination of marital status, see §§ 1.43 and 1.143-1.

(d) *Nonresident aliens ineligible.* No credit is allowed under section 37 to any individual for any taxable year during which that individual is at any time a nonresident alien unless the individual is treated, by reason of an election under section 6013 (g) or (h), as

a resident of the United States for that taxable year.

[T.D. 7743, 45 FR 84049, Dec. 22, 1980]

### § 1.37-2 Credit for individuals age 65 or over.

(a) *In general.* This section illustrates the computation of the credit for the elderly in the case of an individual who has attained the age of 65 before the close of the taxable year. This section shall not apply to an individual for any taxable year for which the individual makes the election described in section 37(e)(2) and paragraph (b) of § 1.37-3.

(b) *Computation of credit.* The credit for the elderly for an individual to whom this section applies equals 15 percent of the individual's "section 37 amount" for the taxable year. An individual's "section 37 amount" for a taxable year is the initial amount determined under section 37(b)(2), reduced as provided in section 37(b)(3) and (c)(1).

(c) *Examples.* The computation of the credit for the elderly for individuals to whom this section applies may be illustrated by the following examples:

*Example 1.* A, a single individual who is 67 years old, has adjusted gross income of \$8,000 for the calendar year 1977. A also receives social security payments of \$1,450 during 1977. A does not itemize deductions. A's credit for the elderly is \$120, computed as follows:

Initial amount under section 37(b)(2)	\$2,500
Reductions required by section 37	
(b)(3) and (c)(1):	
Social security payments	\$1,450
One-half the excess of adjusted gross income over \$7,500	250
Section 37 amount	800
15 pct. of \$800	\$120

A's tax from the tax tables, which reflect the allowance of the general tax credit, is \$662. Accordingly, the limitation of section 37(c)(2) and paragraph (b) of § 1.37-1 does not reduce A's credit for the elderly.

*Example 2.* H and W, who have both attained the age of 65, file a joint return for calendar year 1977. For that year H and W have adjusted gross income of \$8,120; H also receives a railroad retirement pension of \$1,550, and W receives social security payments of \$1,200. H and W do not itemize deductions. The credit for the elderly allowed to H and W for 1977 is \$139, computed as follows:

Initial amount under section 37(b)(2)	\$3,750
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### § 1.37-3

### 26 CFR Ch. I (4-1-02 Edition)

Reductions required by section 37			
(b)(3):			
Railroad retirement pension .....	\$1,550		
Social Security payments .....	1,200		2,750
Section 37 amount .....			1,000
15 pct. of \$1,000 .....			150
Limitation based upon amount of tax (derived from table reflecting allowance of general tax credit) ..		\$139	

Since the adjusted gross income of H and W is not greater than \$10,000, no reduction of the initial amount is required under section 37 (c)(1).

[T.D. 7743, 45 FR 84050, Dec. 22, 1980]

#### § 1.37-3 Credit for individuals under age 65 who have public retirement system income.

(a) *In general.* This section provides rules for the computation of the credit for the elderly under section 37(e) in the case of an individual who has not attained the age of 65 before the close of the taxable year and whose gross income for the taxable year includes retirement income within the meaning of paragraph (d)(1)(ii) of this section (*i.e.*, under a public retirement system). If such an individual is married within the meaning of section 143 at the close of the taxable year and the spouse of the individual has attained the age of 65 before the close of the taxable year, this section shall apply to the individual for the taxable year only if both spouses make the election described in paragraph (b) of this section. If both spouses make the election described in paragraph (b) of this section for the taxable year, the credit of each spouse shall be determined under the rules of this section. See paragraph (f)(2) of this section for a limitation on the effects of community property laws in making determinations and computations under section 37(e) and this section.

(b) *Election by certain married taxpayers.* If a married individual under age 65 at the close of the taxable year has retirement income and the spouse of that individual has attained the age of 65 before the close of the taxable year, both spouses may elect to compute the credit provided by section 37 under the rules of section 37(e) and this section. The spouses shall signify the election on the return (or amended return) for the taxable year in the manner prescribed in the instructions accompanying the return. The election

may be made at any time before the expiration of the period of limitation for filing claim for credit or return for the taxable year. The election may be revoked without the consent of the Commissioner at any time before the expiration of that period by filing an amended return.

(c) *Computation of credit.* The credit of an individual under section 37(e) and this section equals 15 percent of the individual's credit base for the taxable year. The credit base of an individual for a taxable year is the lesser of—

(1) The retirement income of the individual for the taxable year, or

(2) The amount determined under section 37(e)(5), as modified by section 37(e)(6) and (7).

(d) *Retirement income*—(1) *General rule*—(i) *For individuals 65 or over.* Section 37(e)(4)(A) enumerates the kinds of income which may be treated as the retirement income of an individual who has attained the age of 65 before the close of the taxable year. They include income from pensions and annuities, interest, rents, dividends, certain bonds received under a qualified bond purchase plan, and certain individual retirement accounts or annuities.

(ii) *For individuals under 65.* In the case of an individual who has not attained the age of 65 before the close of the taxable year, retirement income consists only of income from pensions and annuities (including disability annuity payments) under a public retirement system which arises from services performed by that individual or by a present or former spouse of that individual. The term “public retirement system” means a pension, annuity, or retirement, or similar fund or system established by the United States, a State, a possession of the United States, any political subdivision of any of the foregoing, or the District of Columbia.

(2) *Rents.* For purposes of section 37(e)(4)(A)(iii), income from rents shall be the gross amount received, not reduced by depreciation or other expenses, except that beneficiaries of a trust or estate shall treat as retirement income only their proportionate shares, of the taxable rents of the trust or estate. In the case of an amount received for board and lodging, only the